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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

LEEWARD HOTELS, L.P., an Arizona
limited partnership,

Debtor.

Chapter 11 Proceedings

Case No. 99-09162-ECF-GBN

**OBJECTION TO PLAN OF REORGANIZATION
FILED BY LENNAR PARTNERS**

Hearing Date: June 2, 2000

Hearing Time: 9:00 a.m.

Courtroom 4, 10th Floor

Leeward Hotels, L.P. ("Debtor") files this objection to the Plan of Reorganization filed by Lennar Partners on behalf of LaSalle National Bank, as trustee ("Lennar Plan"). As the plan proponent, Lennar has the burden of establishing each applicable requirement of Bankruptcy Code § 1129. In re Rusty Jones, 110 B.R. 362, 373 (Bankr. N.D. Ill. 1990); In re Cellular Info. Systems, Inc., 171 B.R. 926 (Bankr. D.D.N.Y. 1994). The Lennar Plan fails to comply with the provisions of §1129 and therefore Lennar will be unable to sustain its burden of proof. Accordingly, confirmation of the Lennar Plan must be denied.

The Lennar Plan Has Not Been Proposed in Good Faith

Section 1129(a)(3) requires that "[t]he plan has been proposed in good faith and not by any means forbidden by law." In order satisfy the statutory requirement of good faith, a plan must be intended to achieve a result consistent with the objectives and purposes of the Bankruptcy Code. In re Corey, 892 F.2d 829, 835 (9th Cir. 1989); In re Stolrow's, Inc., 84 B.R. 167, 172 (9th Cir. BAP 1988). Good faith also requires a fundamental fairness in dealing with creditors and claimants. Stolrow's, 84 B.R. at 172. Whether a Plan has been proposed in good faith is determined in view of the totality of the circumstances. Id.

1 In this case, Lennar has proposed a plan which benefits only Lennar. The Lennar Plan requires an auction
2 on the Effective Date of the 10 Hotels on which Lennar claims a lien and a return to Amresco of the Albuquerque
3 Hotel on which it claims a lien. Lennar is permitted to credit bid on each of the Hotels. The proceeds from the
4 sale of each of the Lennar Hotels is first credited against the debt against the individual Hotel and then applied to
5 Lennar's guaranty claim. While the Lennar Plan addresses at great length procedures for distributing excess
6 proceeds to other creditors, it admits in its own Disclosure Statement that it is unlikely unsecured creditors will
7 have any recovery whatsoever.¹

8 Lennar's intent is simply to foreclose on its collateral without regard to whether unsecured creditors
9 receive payment. Its proposed plan is certainly not the only alternative available in this case. In contrast, the
10 Debtor has proposed a full-pay plan in which creditors, including Lennar are paid the full amount of their claims
11 plus interest. These circumstances demonstrate that the Lennar Plan which furthers only Lennar's interests is not
12 proposed in good faith.

13 **The Lennar Plan Does Not Comply with §1129(a)(8)**

14 Section 1129(a)(8) requires

15 With respect to each class of claims or interests -

16 (A) such class has accepted the Plan; or

17 (B) such class is not impaired under the Plan.

18 Although the balloting has not been completed at the time of the filing this objection, the preliminary
19 results indicate that certain impaired classes under the Lennar Plan have rejected the Lennar Plan.

20 **The Lennar Plan Is Not Feasible**

21 The Lennar Plan purports to pay Classes 1 through 5 on the Effective Date from cash available from the
22 Debtor's debtor-in-possession accounts (DIP Account). By confirmation, the total amount of claims in these
23 classes will be well over \$1,000,000. It is unlikely there will be a sufficient amount of cash in the DIP Account
24 to pay these claims in full on the Effective Date, yet Lennar has made no provision in its plan for the infusion of
25 monies sufficient to absorb the shortfall.
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¹At p. 30: The Secured Lender believes it to be likely, however, that final Hotel Sale Prices obtained for the Hotel Properties at the Hotel Auction will not be sufficient to permit any recovery for any holder of a Claim or Equity Interest in Classes 20 through 22.

1 **The Lennar Plan Does Not Comply with §1129(a)(9)**

2 Section 1129(a)(9)(A) requires that administrative creditors be paid in full in cash on the effective date of
3 the plan unless the holder of the claim has agreed to different treatment. Section 1129(a)(9)(C) provides for
4 minimum treatment of priority tax claims. As stated above, it is unclear whether there will be sufficient cash to
5 pay these creditors and there is no provision for the infusion of monies from Lennar to make these payments. In
6 addition, Section 6.1 appears to skew the priorities mandated by the Code.

7 **The Lennar Plan Fails to Satisfy the Requirements of §1129(a)(10)**

8 Section 1129(a)(10) requires that at least one class of claims that is impaired under the plan vote in favor
9 of the plan without including the votes of any insiders. Although the balloting has not been completed at the time
10 of filing, it appears the only impaired creditor which will vote to accept the Lennar Plan is Lennar. It is unlikely
11 Lennar will be able to vote. It cannot have an allowed claim under § 502(d) since it has received, and has failed
12 to disgorge, voidable transfers pursuant to 11 U.S.C. § 547. As a result, Lennar's vote cannot be considered for
13 purposes of § 1129(a)(10).

14 **The Lennar Plan Discriminates Unfairly and Is Not Fair and Equitable**

15 The preliminary balloting results on the Lennar Plan indicate that not all impaired classes will be accepting.
16 Consequently, the Lennar Plan must comply with §1129(b), which requires that a plan may not discriminate
17 unfairly and that it must be fair and equitable. The Lennar Plan discriminates unfairly against classes of unsecured
18 creditors by subordinating them without justification. In addition, the Lennar Plan is not fair and equitable to
19 creditors or equity holders. As stated in In re Grandfather Mountain Ltd. Partnership, 207 B.R. 475 (Bankr.
20 M.D.N.C. 1996), "in order to satisfy the overall requirement of 1129(b)(1) that a plan be 'fair and equitable' the
21 plan must literally be fair and equitable." (emphasis by the court). See also D&F Const., Inc., 865 F.2d 673, 675
22 (5th Cir. 1989). It is hardly fair and equitable when all creditors can be paid through Debtor's Plan and no
23 unsecured creditors, other than Lennar will be paid in the Lennar Plan.

24
25 The auction procedure is woefully inequitable to creditors and equity holders. Supposedly, the auction
26 will be advertised prior to the sale. Bidders will be expected to submit notices to bid and post \$100,000 security
27 prior to confirmation, but it will be impossible to determine when confirmation might occur. The process is
28 confusing and discourages any potential bidders from coming forward. Bidders would increase the chances of a
distribution to creditors. Thus, as it stands the auction sale proposed is not fair and equitable.

1 Finally, the Lennar Plan does not provide for fair and equitable treatment of secured claims in accordance
2 with §1129(b)(2)(A). Although, the Lennar Plan purports to pay on the Effective Date secured claims relating
3 to real estate taxes, personal property taxes and mechanic's liens, it is unclear whether this will occur. Article 6.1
4 of the Lennar Plan provides for Classes 1-5 to receive cash from the DIP Account. As stated above, there may
5 be insufficient funds to pay secured claimant from this pool. Section 6.2 provides that the Hotels will be sold free
6 and clear of all liens. There is no provision that any of the secured claims for taxes and mechanic's liens will attach
7 to the proceeds and in fact, it does not appear there will be any proceeds. The result to these claimants is an
8 elimination of their liens and no payment.

9 **CONCLUSION**

10 For the foregoing reasons, the Debtor requests the Court to deny confirmation of the Lennar
11 Plan.

12 DATED this 28th day of April, 2000.

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